

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**ROBERT J CAULLEY,**

**Petitioner,**

**v.**

**CASE NO 2:11-CV-00195**

**JUDGE SMITH**

**MAGISTRATE JUDGE ABEL**

**MICHELE MILLER, WARDEN,**

**Respondent.**

**ORDER**

Petitioner, a state prisoner, brings the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This case involves Petitioner's convictions after a jury trial in the Franklin County Court of Common Pleas on murder and voluntary manslaughter in the January 1994, killings of his mother and father, Charles and Lois Caulley. Petitioner maintains that he is actually innocent of these charges.

On July 11, 2011, Petitioner filed a motion to amend his habeas corpus petition to include the following additional claim:

Caulley's right to a fair trial and due process was violated when his trial counsel was operating under a conflict of interest while representing Caulley in his capital trial.

Petitioner alleges that his attorney was having an affair with his wife during the time of trial. He seeks a stay of proceedings pending exhaustion of this claim in the state courts. Petitioner indicates that, on April 20, 2011, he filed a motion for new trial in the state trial court based on newly discovered evidence indicating that his attorney, James Owen, suffered a conflict of interest by maintaining a sexual relationship with his wife prior to and during his trial, *see Motion to Amend*, Doc. 10, and indicates that the trial court scheduled a hearing on his motion for October 20, 2011.

*See Status Report*, Doc. 16. Respondent opposes Petitioner's requests, contending that Petitioner's motion to amend the petition is time-barred. *See Response in Opposition*, Docs. 12, 13. Petitioner, however, argues that his claim, based on newly discovered evidence, may properly be addressed in these proceedings.

This Court is unable to determine the current status of Petitioner's motion in the state courts based on the record before this Court. Respondent, therefore, is **DIRECTED** to file, within fourteen (14) days, a supplemental response indicating the current status of Petitioner's motion for a new trial, any state court records relating to those proceedings, and whether the Respondent remains opposed to Petitioner's request for a stay in these proceedings.

**IT IS SO ORDERED.**

s/Mark R. Abel  
United States Magistrate Judge